IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

CRP.No. 1001 of 2003

(AS.73/1999 of SUB COURT, NEDUMANGAD
OS.72/1997 of ADDL.MUNSIFF COURT, NEDUMANGAD)

REVN. PETITIONERS/ APPELLANTS/PLAINTIFFS:
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1. SREEDHARA PANICKER,
   NEPHEW OF KRISHNA PANICKER,
   VIJAYASREE, T.C.9/1001,
   SASTHAMANGALAM,
   MUDAVARAM MURI, ANCHAMADA VILLAGE,
   THIRUVANANTHAPURAM TALUK,
   POWER OF ATTORNEY HOLDER OF APPELLANTS 2 TO 4.

2. GOPALAKRISHNAN NAIR,
   S/O. SREEDHARA PANICKER, AGED 43,
   BANK EMPLOYEE, -DO- -DO-.

3. GIRIJAKUMARI ALIAS KARTHIYANI AMMA,
   AGED 39, D/O. VIJAYAKUMARI AMMA, -DO- -DO-.

4. VIJAYAKRISHNAN NAIR, AGED 34,
   S/O. SREEDHARA PANICKER, -DO- -DO-.

   BY ADV. SRI.M. RAJASEKHARAN NAYAR

RESPONDENTS/RESPONDENTS/DEFENDANTS:
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1. K.P.MUHAMMED,
   VICE PRESIDENT, PLANTATION WORKERS UNION (CITU),
   THIRUVANANTHAPURAM, RESIDING AT KUTTICHAL ANNAVILA
   VEEDU, KOKKUDI MURI, MANNOORKARA VILLAGE.

2. K.VIKRAMAN NAIR,
   RESIDING AT LAKSHMI NIVAS, KOTOOR,
   KOKKUDI MURI, MANNOORKARA VILLAGE.

3. P.DEVADASAN,
RESIDING AT ERUMAKUZHI ROADARIKATHU VEEDU,
KUTTICHAL, -DO- MURI -DO-.

4. R.SATHEESAN NAIR,
RESIDING AT KAVITHA BHAVAN,
ERUMAKUZHI -DO- -DO-.

5. G.APPUKUTTAN,
RESIDING AT LEENA BHAVAN,
ERUMAKUZHI -DO- -DO-.

6. M.MANIYAN PILLAI,
RESIDING AT AJITHA BHAVAN,
THIPPACHANTHARA, -DO- -DO-.

R2 TO R5 BY ADV. SRI.M.BALAGOVINDAN
AND ADV. SRI.M.R.SAJITH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

C.R.P. No. 1001 OF 2003

Dated this the 31st October , 2007

O R D E R

Revision Petitioners filed O.S.No.72 of 1997 on the file of the court of the Addl. Munsiff's Court, Nedumangad against the respondents herein, claiming a sum of 15,150/- as damages. The trial court dismissed the Suit. On appeal, by the plaintiffs as A.S.No.73 of 1999, the Court of the Subordinate Judge, Nedumangad confirmed the judgment and decree of the trial court.

2. The case of the plaintiffs is that the plaintiffs are the owners of 'Sreekrishna ' estate which has extensive rubber plantations. The defendants are the employees of the estate. There was a labour problem in the estate. Two of the defendants were dismissed from service. On 08.08.1996, under the leadership of the first defendant, the other defendants with some other persons have entered into the estate and demolished portions of the barbed wire fencing and boundaries and destroyed granite pillors and vessels and implements used for collection of rubber latex. It is also alleged that a portion of the compound wall was demolished and about 80 numbers of tiles on the roof of the office building were destroyed. It is also alleged that about 100 rubber saplings were destroyed by the defendants. The police, on information by the watchman of the plaintiffs, registered two crimes as Crime No. 134 of 1996 and 136 of 1996. The plaintiffs contended that the defendants have deliberately caused loss to the plaintiffs by committing the mischief as alleged in the plaint.

3. The defendants denied the case of the plaintiffs. On the other hand, they contended that the plaintiffs themselves have stage managed things to make it appear that the defendants have caused loss to the plaintiffs and for the purpose of dismissing at least some of the employees.

4. Before the trial court, the first plaintiff was examined as P.W.1 . He was not an eye witness to the incident and he could not say anything about the persons who committed the mischief. Except the information given by the watchman, he has no direct knowledge about the incident. P.Ws. 2 and 3 are police officers who registered the crime and prepared the mahazar and conducted the investigation . Their evidence was also not helpful to come to the conclusion as to whether the defendants committed the acts complained of. P.W.4 is the watchman employed in the estate. The trial court did not rely on his evidence and it was held that his evidence is interested version. P.W.5 is the Commissioner who conducted the inspection of the property. The only evidence available before the trial court, as to what transpired on 08.08.1996, was the evidence of P.W.4. The trial court which had the opportunity of seeing the witnesses and noting their evidence, was not prepared to accept the testimony of P.W.4. The trial court held that it is not safe to arrive at a conclusion that the defendants have committed the mischief solely based on the evidence of P.W.4.

5. On appeal, the appellate court also considered the oral and documentary evidence in the case and came to the conclusion that the trial

court was justified in dismissing the suit holding that the evidence of P.W.4 was not sufficient to establish the contentions put forward by the plaintiffs.

6. Both the courts below have considered the case on the basis of the evidence on record. The conclusions are arrived at on the basis of appreciation of evidence . In a revision under section 115 of the Code of Civil Procedure, the High Court would not be justified in interfering with the concurrent findings of fact unless there are materials to hold that the courts below either failed to exercise their jurisdiction or exercised a jurisdiction not vested by law. It is also not established that there was any error of law warranting interference. That a different conclusion would be possible on evidence is not a ground to upset the concurrent findings of the fact arrived at by the courts below. I am of the view that no grounds are made out by the petitioners to allow this Civil Revision Petition.

Accordingly, Civil Revision Petition is dismissed . However, there will be no order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 1001 OF 2003

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Dated this the 31st October, 2007

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